

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James A. Pauling, #181883,)	
)	C/A No. 2:06-1828-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
Oscar Faulkenberry, Warden of Kershaw)	
Correctional Institution; and Henry)	
McMaster Attorney General of South)	
Carolina,)	
)	
Respondents.)	
)	

Petitioner James A. Pauling is an inmate in custody of the South Carolina Department of Corrections. He filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 19, 2006.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On June 22, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the within petition be dismissed without prejudice as a successive § 2254 petition. The Magistrate Judge noted that Petitioner would be required to obtain an order from the Court of Appeals for the Fourth Circuit authorizing the court to consider the petition. See Rule 9 of the Rules Governing Section 2254 Cases.

On July 6, 2006, Petitioner filed a “motion of continuance for cause” indicating that he had been unaware of the requirements of Rule 9, and stating that he has requested permission from the Fourth Circuit to file a successive petition. Petitioner requested the court to stay the within action

pending his receipt of a response from the Fourth Circuit. Petitioner otherwise did not object to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The court concurs with the recommendation of the Magistrate Judge. The court further is informed that on August 18, 2006 the Fourth Circuit denied Petitioner's motion to file a successive application. Accordingly, the court is without authority to consider the merits of Petitioner's claims. For the reasons stated herein, the § 2254 petition is dismissed without prejudice and without requiring Respondents to file a return.

IT IS SO ORDERED.

/s/ Margaret B. Seymour

United States District Judge

December 7, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.